

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

TIFFANY RICHARD,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting

Commissioner of Social Security,

Defendant.

No. 1:14-cv-03098-SAB

**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Before the Court for consideration is the Report and Recommendation of the Honorable Victor E. Bianchini, United States Magistrate Judge, entered October 26, 2015, ECF No. 20, recommending that Plaintiff's Motion for Summary Judgment, ECF No. 14, should be granted. Defendant filed objections to the Report and Recommendation, ECF No. 21, and Plaintiff responded, ECF No. 22. The Court has conducted a *de novo* review of the record and, as set forth below, adopts the Report and Recommendation and grants Plaintiff's Motion for Summary Judgment.

LEGAL STANDARD

A district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). A party may file specific written objections to the findings and recommendations of a magistrate judge. *Id.* When written objections have been filed, the district court

1 is required to “make a *de novo* determination of those portions of the report or
2 specified proposed findings or recommendations to which objection is made.” *Id.*
3 Where a party fails to object, however, a district court is not required to conduct
4 “any review,” *de novo* or otherwise, of the report and recommendations of a
5 magistrate judge. *Thomas v. Arn*, 474 U.S. 140, 149 (1985).

6 **PROCEDURAL FACTS**

7 The facts of this case, including Plaintiff's medical history, are more fully
8 set forth in the Report and Recommendation and are incorporated herein by
9 reference. The following is a short summary of the case.

10 Plaintiff filed for Supplemental Security Income (“SSI”) and Disability
11 Insurance benefits (“DIB”) in August, 2010. Her applications were denied.
12 Plaintiff sought judicial review of the Commissioner’s denial of benefits. On
13 October 27, 2015, Magistrate Judge Bianchini issued a Report and
14 Recommendation in which he recommended that Plaintiff’s Motion for Summary
15 Judgment be granted. ECF No. 20. Magistrate Judge Bianchini found that Plaintiff
16 met the insured status requirements of the Social Security Act through September
17 30, 2012. ECF No. 20 at 10. He also found that the ALJ erred with regard to her
18 assessment of Plaintiff’s credibility for the following reasons: (1) the ALJ
19 erroneously viewed Plaintiff’s activities of daily living as inconsistent with her
20 claims of disabling limitation; (2) the ALJ erroneously concluded that Plaintiff’s
21 ability to interact with familiar individuals on a structured basis contradicted her
22 claim that she would be unable to manage the stress and social demands of regular
23 work activity, even with the limitations identified by the ALJ; and (3) although the
24 ALJ cited the fact that Plaintiff was discharged from a job because of dishonesty
25 as a reason for discounting her credibility, there was no indication that Plaintiff
26 was exaggerating her symptoms or malingering, and the ALJ should have
27 considered the totality of the circumstances before discrediting Plaintiff on this
28 ground. ECF No. 20 at 12-15.

1 Magistrate Judge Bianchini concluded that the ALJ erred by discounting the
2 DSHS evaluations; rather, the three evaluations conducted by M. Gabriela
3 Mondragon, Christopher Clark, and Russell Anderson, which assessed marked
4 limitations with regard to Plaintiff's ability to maintain appropriate behavior in a
5 work setting, was "evidence that Plaintiff could not interact appropriately in a
6 work setting." ECF No. 20 at 18 (quotation in original). Ultimately, Magistrate
7 Judge Bianchini concluded that the ALJ did not properly assess the DSHS
8 evaluators' opinions and the decision to discount the opinions was not supported
9 by substantial evidence.

10 Magistrate Judge Bianchini found that while the ALJ erred in not
11 considering Dr. Maicocco's report, the error was harmless, but found the ALJ's
12 error in not considering Dr. Sanchez's report a reason for remand.

13 Finally, Magistrate Judge Bianchini remanded for a calculation of benefits
14 because the treatment providers uniformly concluded that Plaintiff could not meet
15 the demands of competitive work, even in a low-stress environment, and would
16 have absentee issues that an employer would not accept. In doing so, he relied on
17 the fact that the ALJ failed to provided legally sufficient reasons for rejecting the
18 treating provider's, as well as Plaintiff's testimony, there were no outstanding
19 issues that needed to be resolved, and the ALJ would be required to find Plaintiff
20 disabled were such evidence credited.

21 Defendant timely filed objections to the Report and Recommendation. ECF
22 No. 21. Defendant maintains the ALJ's credibility decision was adequately
23 articulated and supported by sufficient evidence and Magistrate Judge Bianchini
24 should have deferred to the ALJ's rational interpretation of the medical evidence.
25 Finally, even if the Court finds the ALJ erred, it should decline to order an
26 immediate award of benefits in this case.

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ANALYSIS

1. The ALJ's credibility determination

When there is no evidence of malingering, the ALJ must give specific, clear and convincing reasons for finding a claimant not credible. *Ghanim v. Colvin*, 764 F.3d 1154, 1163 (9th Cir. 2014) (quoting *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)). Where an ALJ improperly rejects a claimant's testimony regarding her limitations, and the claimant would be disabled were her testimony credited, the court should not remand solely to allow the ALJ to make specific findings regarding that testimony. *Vasquez v. Astrue*, 572 F.3d 586, 593 (9th Cir. 2008). Rather, the testimony is credited as true as a matter of law. *Id.*

The Court adopts Magistrate Judge Bianchini's finding, along with his reasoning, that the ALJ made several credibility errors. Defendant argues the ALJ properly relied on the fact that Plaintiff had been fired for stealing money to find her less than credible, which meets the clear and convincing standard. The Court disagrees. Given the scope of the errors identified by Magistrate Judge Bianchini, and not contested by Defendant, the clear and convincing standard cannot be met. The errors in the ALJ's credibility assessment are not minor or harmless. In looking at the record as a whole, the credibility errors identified by Magistrate Judge Bianchini altered the outcome of the case, especially in light of the treatment providers' opinions that Plaintiff could not meet the demands of competitive work.

2. Evaluation of the Medical Evidence

The Court adopts Magistrate Judge Bianchini's evaluation of the medical evidence. Contrary to Defendant's assertion, Magistrate Judge Bianchini did not substitute his opinion for that of the fact finder. Defendant faults Magistrate Judge Bianchini for failing to acknowledge that Dr. Dove opined that Plaintiff would probably not miss work. As Plaintiff points out, Dr. Dove treated Plaintiff for physical impairments. Here, the ALJ did not find any severe physical impairment;

1 rather, it is clear from the record that Plaintiff suffers from mental health
2 impairments. Consequently, the ALJ erred in failing to incorporate Dr. Billings'
3 limitations into the RFC, as well as failing to mention Dr. Sanchez' report.

4 **3. Award of Immediate Benefits**

5 The Court adopts Magistrate Judge Bianchini's reasoning and ultimate
6 conclusion that the three *Garrison* factors have been met. *See Garrison v. Colvin*,
7 759 F.3d 995, 1019-21 (9th Cir. 2014). As such, the correct remedy in this case is a
8 remand for an immediate award of benefits.¹

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. The Court **adopts** the Report and Recommendation issued by Magistrate
11 Judge Bianchini, ECF No. 20.

12 2. Plaintiff's Motion for Summary Judgment, ECF No. 14, is **GRANTED**.

13 3. Defendant's Motion for Summary Judgment, ECF No. 17, is **DENIED**.

14 4. The decision of the Commissioner denying benefits is **reversed** and
15 remanded for an award of benefits.

16 5. The District Court Executive is directed to enter judgment in favor of
17 Plaintiff and against Defendant.

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27 ¹ As Plaintiff points out, Magistrate Judge Bianchini did not rely on Dr. Sanchez's
28 report to recommend a remand for an immediate award of benefit.

1 **IT IS SO ORDERED.** The District Court Executive is hereby directed to
2 file this Order and provide copies to counsel.

3 **DATED** this 4th day of January, 2016.
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10 Stanley A. Bastian
11 United States District Judge
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